

AMENDED IN SENATE MAY 7, 2013
AMENDED IN SENATE MARCH 21, 2013

SENATE BILL

No. 244

Introduced by Senator Liu

February 12, 2013

An act to amend Section 647 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 244, as amended, Liu. Disorderly conduct.

Under existing law, a person who commits certain acts, including soliciting or, engaging in lewd or dissolute conduct in a public place, is guilty of disorderly conduct, a misdemeanor.

This bill would make a violation of that provision involving any adult who solicits a minor to engage in or who engages in lewd or dissolute conduct with a minor in a public place punishable by imprisonment in a county jail for not less than 90 days, *except as specified*.

Existing law also provides that a person who solicits or agrees to engage in or who engages in any act of prostitution, as specified, is guilty of disorderly conduct.

This bill would make a violation of that provision involving any adult who solicits or who agrees to engage in or who engages in an act of prostitution where the other party to the act is a minor punishable by imprisonment in a county jail for not less than 90 days, *except as specified*.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 647 of the Penal Code is amended to
2 read:

3 647. Except as provided in subdivision (l), every person who
4 commits any of the following acts is guilty of disorderly conduct,
5 an offense punishable as a misdemeanor:

6 (a) Who solicits anyone to engage in or who engages in lewd
7 or dissolute conduct in any public place or in any place open to
8 the public or exposed to public view.

9 (b) Who solicits or who agrees to engage in or who engages in
10 any act of prostitution. A person agrees to engage in an act of
11 prostitution when, with specific intent to so engage, he or she
12 manifests an acceptance of an offer or solicitation to so engage,
13 regardless of whether the offer or solicitation was made by a person
14 who also possessed the specific intent to engage in prostitution.
15 No agreement to engage in an act of prostitution shall constitute
16 a violation of this subdivision unless some act, in addition to the
17 agreement, is done within this state in furtherance of the
18 commission of an act of prostitution by the person agreeing to
19 engage in that act. As used in this subdivision, "prostitution"
20 includes any lewd act between persons for money or other
21 consideration.

22 (c) Who accosts other persons in any public place or in any
23 place open to the public for the purpose of begging or soliciting
24 alms.

25 (d) Who loiters in or about any toilet open to the public for the
26 purpose of engaging in or soliciting any lewd or lascivious or any
27 unlawful act.

28 (e) Who lodges in any building, structure, vehicle, or place,
29 whether public or private, without the permission of the owner or
30 person entitled to the possession or in control of it.

31 (f) Who is found in any public place under the influence of
32 intoxicating liquor, any drug, controlled substance, toluene, or any
33 combination of any intoxicating liquor, drug, controlled substance,

1 or toluene, in a condition that he or she is unable to exercise care
2 for his or her own safety or the safety of others, or by reason of
3 his or her being under the influence of intoxicating liquor, any
4 drug, controlled substance, toluene, or any combination of any
5 intoxicating liquor, drug, or toluene, interferes with or obstructs
6 or prevents the free use of any street, sidewalk, or other public
7 way.

8 (g) When a person has violated subdivision (f), a peace officer,
9 if he or she is reasonably able to do so, shall place the person, or
10 cause him or her to be placed, in civil protective custody. The
11 person shall be taken to a facility, designated pursuant to Section
12 5170 of the Welfare and Institutions Code, for the 72-hour
13 treatment and evaluation of inebriates. A peace officer may place
14 a person in civil protective custody with that kind and degree of
15 force which would be lawful were he or she effecting an arrest for
16 a misdemeanor without a warrant. No person who has been placed
17 in civil protective custody shall thereafter be subject to any criminal
18 prosecution or juvenile court proceeding based on the facts giving
19 rise to this placement. This subdivision shall not apply to the
20 following persons:

21 (1) Any person who is under the influence of any drug, or under
22 the combined influence of intoxicating liquor and any drug.

23 (2) Any person who a peace officer has probable cause to believe
24 has committed any felony, or who has committed any misdemeanor
25 in addition to subdivision (f).

26 (3) Any person who a peace officer in good faith believes will
27 attempt escape or will be unreasonably difficult for medical
28 personnel to control.

29 (h) Who loiters, prowls, or wanders upon the private property
30 of another, at any time, without visible or lawful business with the
31 owner or occupant. As used in this subdivision, "loiter" means to
32 delay or linger without a lawful purpose for being on the property
33 and for the purpose of committing a crime as opportunity may be
34 discovered.

35 (i) Who, while loitering, prowling, or wandering upon the private
36 property of another, at any time, peeks in the door or window of
37 any inhabited building or structure, without visible or lawful
38 business with the owner or occupant.

39 (j) (1) Any person who looks through a hole or opening, into,
40 or otherwise views, by means of any instrumentality, including,

1 but not limited to, a periscope, telescope, binoculars, camera,
2 motion picture camera, camcorder, or mobile phone, the interior
3 of a bedroom, bathroom, changing room, fitting room, dressing
4 room, or tanning booth, or the interior of any other area in which
5 the occupant has a reasonable expectation of privacy, with the
6 intent to invade the privacy of a person or persons inside. This
7 subdivision shall not apply to those areas of a private business
8 used to count currency or other negotiable instruments.

9 (2) Any person who uses a concealed camcorder, motion picture
10 camera, or photographic camera of any type, to secretly videotape,
11 film, photograph, or record by electronic means, another,
12 identifiable person under or through the clothing being worn by
13 that other person, for the purpose of viewing the body of, or the
14 undergarments worn by, that other person, without the consent or
15 knowledge of that other person, with the intent to arouse, appeal
16 to, or gratify the lust, passions, or sexual desires of that person and
17 invade the privacy of that other person, under circumstances in
18 which the other person has a reasonable expectation of privacy.

19 (3) (A) Any person who uses a concealed camcorder, motion
20 picture camera, or photographic camera of any type, to secretly
21 videotape, film, photograph, or record by electronic means, another,
22 identifiable person who may be in a state of full or partial undress,
23 for the purpose of viewing the body of, or the undergarments worn
24 by, that other person, without the consent or knowledge of that
25 other person, in the interior of a bedroom, bathroom, changing
26 room, fitting room, dressing room, or tanning booth, or the interior
27 of any other area in which that other person has a reasonable
28 expectation of privacy, with the intent to invade the privacy of that
29 other person.

30 (B) Neither of the following is a defense to the crime specified
31 in this paragraph:

32 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
33 employer, employee, or business partner or associate of the victim,
34 or an agent of any of these.

35 (ii) The victim was not in a state of full or partial undress.

36 (k) (1) In any accusatory pleading charging a violation of
37 subdivision (b), if the defendant has been once previously convicted
38 of a violation of that subdivision, the previous conviction shall be
39 charged in the accusatory pleading. If the previous conviction is
40 found to be true by the jury, upon a jury trial, or by the court, upon

1 a court trial, or is admitted by the defendant, the defendant shall
2 be imprisoned in a county jail for a period of not less than 45 days
3 and shall not be eligible for release upon completion of sentence,
4 on probation, on parole, on work furlough or work release, or on
5 any other basis until he or she has served a period of not less than
6 45 days in a county jail. In all cases in which probation is granted,
7 the court shall require as a condition thereof that the person be
8 confined in a county jail for at least 45 days. In no event does the
9 court have the power to absolve a person who violates this
10 subdivision from the obligation of spending at least 45 days in
11 confinement in a county jail.

12 (2) In any accusatory pleading charging a violation of
13 subdivision (b), if the defendant has been previously convicted
14 two or more times of a violation of that subdivision, each of these
15 previous convictions shall be charged in the accusatory pleading.
16 If two or more of these previous convictions are found to be true
17 by the jury, upon a jury trial, or by the court, upon a court trial, or
18 are admitted by the defendant, the defendant shall be imprisoned
19 in a county jail for a period of not less than 90 days and shall not
20 be eligible for release upon completion of sentence, on probation,
21 on parole, on work furlough or work release, or on any other basis
22 until he or she has served a period of not less than 90 days in a
23 county jail. In all cases in which probation is granted, the court
24 shall require as a condition thereof that the person be confined in
25 a county jail for at least 90 days. In no event does the court have
26 the power to absolve a person who violates this subdivision from
27 the obligation of spending at least 90 days in confinement in a
28 county jail.

29 (3) In addition to any punishment prescribed by this section, a
30 court may suspend, for not more than 30 days, the privilege of the
31 person to operate a motor vehicle pursuant to Section 13201.5 of
32 the Vehicle Code for any violation of subdivision (b) that was
33 committed within 1,000 feet of a private residence and with the
34 use of a vehicle. In lieu of the suspension, the court may order a
35 person's privilege to operate a motor vehicle restricted, for not
36 more than six months, to necessary travel to and from the person's
37 place of employment or education. If driving a motor vehicle is
38 necessary to perform the duties of the person's employment, the
39 court may also allow the person to drive in that person's scope of
40 employment.

(l) (1) A second or subsequent violation of subdivision (j) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.

(2) If the victim of a violation of subdivision (j) was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.

(m) (1) A violation of subdivision (a) that involves any adult who solicits a minor to engage in or who engages in lewd or dissolute conduct with a minor in a public place is punishable by imprisonment in a county jail for not less than 90 days and the defendant shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days. ~~In no event does the court have the power to absolve a person who violates this paragraph from the obligation of spending at least 90 days in confinement in a county jail.~~

(2) A violation of subdivision (b) that involves any adult who solicits or who agrees to engage in or who engages in an act of prostitution where the other party to the act is a minor is punishable by imprisonment in a county jail for not less than 90 days and the defendant shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days. ~~In no event does the court have the power to absolve a person who violates this paragraph from the obligation of spending at least 90 days in confinement in a county jail.~~

(3) *Notwithstanding any other law, the court may reduce the minimum jail sentence in an unusual case, involving a defendant who has not been previously convicted of a violation described in this subdivision, where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition.*

(4) *Nothing in this subdivision precludes prosecution under any other provision.*

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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